

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

WP(C).No. 22961 of 2007(H)

AGAINST THE ORDER DATED 10/07/2007 IN IA.1023/06 IN
OA.88/2005 of DEBT RECOVERY TRIBUNAL, ERNAKULAM
.....

PETITIONER:

A.NIZAMUDEEN, ANGAVILA HOUSE,
KILIKOLLOOR P.O., KOLLAM DISTRICT.

BY ADV. SRI.ALEX N.MATHEW (KOLLAM)
SRI.H.RAMANAN
SRI.JAMES JOSE

RESPONDENTS:

1. DEBTS RECOVERY TRIBUNAL,
(KERALA AND LAKSHADWEEP),
ERNAKULAM.

2. THE FEDERAL BANK LIMITED,
KOLLAM.

R2 BY ADV. SRI.MOHAN JACOB GEORGE
SMT.P.V.PARVATHI
SMT.REENA THOMAS
SRI.L.RAM MOHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 06/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF ORIGINAL APPLICATION NO.88/05 FILED BY R2.

P2: TRUE COPY OF WRITTEN STATEMENT OF PETITIONER.

P3: TRUE COPY OF EXPARTE ORDER PASSED BY DRT IN OA 88/05.

P4: TRUE COPY OF IA NO.1023/06 FILED BY PETITIONER TO SET ASIDE EXT.P3 ORDER.

P5: TRUE COPY OF MEDICAL CERTIFICATE FILED ALONG WITH EXT.P4.

P6: TRUE COPY OF R2'S OBJECTION TO EXT.P4.

P7: TRUE COPY OF ORDER IN I.A. 1023/06.

TRUE COPY

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

.....
W.P.(C) No.22961 of 2007
.....

Dated this the 6th day of August, 2007.

JUDGMENT

Heard counsel for the petitioner and Standing Counsel for Federal Bank. The O.A. filed by the Bank was decreed exparte by the DRT because petitioner did not choose to appear before the Tribunal. Later application for setting aside exparte award was filed which was conditionally allowed on payment of Rs.5 lakhs. Since time for payment is over, DRT is stated to have dismissed the application which happened during pendency of this W.P. Even though petitioner pressed for variation of the condition for setting aside exparte decree imposed by the Tribunal, I am unable to agree with the petitioner's contention because the loan amount is around Rs.25 lakhs. Counsel for the Bank submitted that award is based on documents and evidence furnished by the Bank and even if matter is tried, end is not going to be much different. Having regard to the amount claimed by the Bank, I do not think the order of the Tribunal is arbitrary or liable to be interfered with. However, I feel petitioner can apply for OTS benefit by offering payment exclusive of incentives within a reasonable time and if it is done, Bank should grant incentives and allow settlement under OTS scheme

so that protracted litigation can be avoided. In the circumstances, W.P. is disposed of upholding the order of the Tribunal, but giving two options to the petitioner, either to deposit Rs.5 lakhs before 15.9.2007 and to face the trial or to pay 10% of the decree amount and offer payment of the balance amount within a reasonable time for the Bank to consider OTS and grant incentives to the petitioner. If petitioner adopts latter recourse, there will be direction to the Bank to show leniency and grant reasonable time with incentives so that entire liability gets settled without any litigation. However, if petitioner does not make payment within the timeframe granted by the Bank, the Bank can revive the revenue recovery proceedings in terms of the decree. Recovery proceedings will remain stayed till 15.9.2007 within which time petitioner will remit either Rs.5 lakhs or 10% depending on what relief he wants and based on application by the petitioner, Bank will proceed in the matter.

C.N.RAMACHANDRAN NAIR
Judge

pms